IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1240 OF 2005

WITH

CIVIL APPLICATION NO.1723 OF 2005

Ganpati Narayan Patil & Ors. ..Appellants.

Vs.

Shrirang Balu Ziramile & anr. ..Respondents.

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Mr.P.G.Lad for the Appellants.

Mr.R.V.More for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

12th December, 2005.

P.C. :

A suit for specific performance was decreed by the Trial Court and the decree has been confirmed by the Additional District Judge in appeal. The suit property comprised of Survey No.323 at Tasgaon. On 14th May, 1974 an agreement

to sell was entered into between the Original Plaintiff (the First Respondent) and the vendor Balakabai (the Second Respondent) in respect of the vendor's 1/4 share in respect of the land comprising of Survey No.323. The agreed sale consideration was Rs.8,000/- of which Rs.2,000/- was paid immediately and a further amount of Rs.2,000/- was paid on 12th June, 1974. Under the terms of the agreement to sell the conveyance was to be completed within a period of one month of the vendor receiving her share in a suit for partition which was filed by the vendor in 1970. The suit had been decreed in 1973 and execution proceedings (Regular Darkhast 43 of 1973) were pending. On 18th March, 1975 a notice was issued to the vendor to complete the sale deed and it is common ground that the vendor received possession of her share on 18th July, 1978. On 12th September, 1978 the vendor entered into an agreement to sell with the Appellant and immediately thereafter on 14th September, 1978 a notice was issued by the Plaintiff - the First Respondent both to the vendor and to the Appellants. The Appellants were, therefore, clearly on notice of the prior transaction between the First Respondent and the

Second Respondent. The First Respondent instituted a suit for specific performance on 3rd October, 1978. The conveyance in favour of the Appellants was entered into *pendente lite* on 8th February, 1979.

On these facts both the Courts have come to the conclusion that there was a prior agreement to sell that was entered into with the First Respondent; that the First Respondent had paid valuable consideration and was ready and willing to perform his part of the contract. On behalf of the Appellants two submissions have been made; the first being that the suit was not within the period of limitation and the second, that there is no finding by the Appellate Court on the question as to whether he is a bonafide purchaser for value without notice. Now in so far as the question of limitation is concerned, the vendor admitted that he received possession of the property on 18th July, 1978. Prior thereto the First Respondent had issued a notice on 18th March, 1975 within a period of 11 months of the date of execution of the agreement to sell as envisaged therein. The subsequent notice was issued on 14th September,

1978. The suit came to be instituted on 3rd October, 1978. The vendor's agreement to sell with the Appellants dated 12th September, 1978 was a reflection of the refusal of the vendor to comply with the term of the prior agreement with the First Respondent and the suit was instituted within a period of one month thereafter. The suit was therefore clearly within limitation. In so far as the position of the Appellants is concerned, it is evident that despite a notice dated 14th September, 1978 by the First Respondent, the Appellants went ahead with a transaction with the Second Respondent. The conveyance was on 8th February, 1979 during the pendency of the suit for specific performance. In these circumstances, the Appellants cannot possibly contend that they are bonafide purchasers for value without notice. The Second Appeal does not raise any substantial question of law and is accordingly dismissed.

In view of the disposal of the Second Appeal, the Civil Application is rendered infructuous and is accordingly disposed of.